

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Noah Kalkstein	Team: Team # 7	CCRB Case #: 200717254	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 11/28/2007 2:45 PM	Location of Incident: Beverly Road between Ocean Parkway and East 22nd Street	Precinct: 70	18 Mo. SOL 5/28/2009	EO SOL 5/28/2009	
Date/Time CV Reported Wed, 11/28/2007 3:05 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Wed, 11/28/2007 3:05 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Leonard Clarke	27183	940013	070 PCT
2. POM Thomas Gugliucci	20705	940225	070 PCT
3. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Mike Civil	01816	935092	070 PCT
2. POM Albert Lloyd	01200	936963	070 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Leonard Clarke	Abuse: PO Leonard Clarke stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.POM Leonard Clarke	Force: PO Leonard Clarke used physical force against § 87(2)(b)	
C.POM Leonard Clarke	Abuse: PO Leonard Clarke searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
D.POM Thomas Gugliucci	Abuse: PO Thomas Gugliucci searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
E. An officer	Abuse: An officer damaged § 87(2)(b)'s property.	

Synopsis

On November 28, 2007, at approximately 2:45pm, § 87(2)(b) was being driven down Beverly Road in Brooklyn by his friend § 87(2)(b). After the vehicle had passed Ocean Avenue, it was pulled over by a police vehicle containing PO Leonard Clarke and PO Thomas Gugliucci for the civilians' failure to wear their seatbelts (Allegation A). PO Clarke allegedly approached the passenger side of the vehicle and forcefully pulled § 87(2)(b) out of the car after § 87(2)(b) questioned why they were pulled over (Allegation B). PO Clarke and PO Gugliucci then allegedly searched the front seats of § 87(2)(b)'s vehicle (Allegations C and D). During the search, one of the officers allegedly damaged § 87(2)(b)'s vehicle (Allegation E).

§ 87(2)(g)

This case was originally assigned to Inv. Samrawit Tadesse. On July 15, 2008, the case was transferred to Inv. Alana Ihne upon Inv. Tadesse's departure from the agency. On December 2, 2008, the case was reassigned to ASI Noah Kalkstein upon Inv. Ihne's departure from the agency.

Summary of Complaint

§ 87(2)(b) filed this complaint with the CCRB on November 28, 2007 (encl. 6). § 87(2)(b) was interviewed at the CCRB on December 17, 2007 (encl. 7).

On November 28, 2007, at approximately 2:45pm, § 87(2)(b)'s friend, § 87(2)(b) was dropping him off at the car shop on Coney Island Avenue in Brooklyn where § 87(2)(b)'s car was ready to be picked up from being serviced. As § 87(2)(b) and § 87(2)(b) were driving down Ocean Avenue, between Dorchester Road and Newkirk Avenue, in Brooklyn, they saw two police officers in a marked police van in the opposite lane. The officers also saw § 87(2)(b) and § 87(2)(b) who continued driving towards Beverly Road. § 87(2)(b) made a right turn onto Beverly Road. The police van made a U-Turn on Ocean Avenue and followed § 87(2)(b)'s vehicle for three to four blocks and two traffic lights, and made the turn at the same street where § 87(2)(b) turned. The officers chirped the sirens as an indication to pull over the vehicle, which § 87(2)(b) did immediately. § 87(2)(b) put the car in park, turned off the ignition, and rolled down the driver's side window all the way. § 87(2)(b) explained that he was glad that their vehicle was stopped at a busy intersection with many people around otherwise "it could have been a lot worse." A white male officer identified by the investigation as PO Thomas Gugliucci approached the driver's side of § 87(2)(b)'s vehicle and a black male officer identified by the investigation as PO Leonard Clarke approached on the passenger side. PO Gugliucci asked § 87(2)(b) for his license and registration, which § 87(2)(b) provided as he was saying "little things." § 87(2)(b) told PO Gugliucci, "You got nothing better to do? You want to stop two black kids. You see us in a car and you make the assumption that we are doing bad." § 87(2)(b) never cursed at PO Gugliucci, who replied, "I see you a tough guy." PO Clarke, who was standing right by the front passenger door, did not say or do anything at this point. § 87(2)(b) assumed that PO Clarke was just there as back-up. The window by § 87(2)(b) was rolled all the way up. § 87(2)(b) who was seated in the front passenger seat and was slightly slouched down in the seat, leaned to his left a little and asked PO Gugliucci, "Officer, why are we being pulled over?" PO Gugliucci gave no response to § 87(2)(b) and instead walked back to the police van with § 87(2)(b)'s license and registration. PO Clarke remained where he was.

PO Gugliucci came back to the driver's side of § 87(2)(b)'s vehicle with § 87(2)(b)'s identification and insurance. As PO Gugliucci was giving § 87(2)(b) his identification and insurance card back, § 87(2)(b)

§ 87(2)(b) leaned over slightly and asked PO Gugliucci again why their vehicle was stopped. PO Clarke immediately told § 87(2)(b) to get out of the car. § 87(2)(b) told PO Clarke that there was no reason for him to get out of the car so he was not going to do so. PO Clarke opened the front passenger side door and said, "What did I tell you?" PO Clarke reached into the vehicle and across § 87(2)(b) and unbuckled § 87(2)(b)'s seatbelt by pressing the button by § 87(2)(b)'s left hip. PO Clarke grabbed the front of § 87(2)(b)'s hoodie by both hands and pulled § 87(2)(b) out of the vehicle. § 87(2)(b) was caught off guard by PO Clarke's actions so his body was dead weight as he was getting pulled out of the vehicle until his hands, back, and part of his legs started dragging on the ground. At this point, § 87(2)(b) caught himself and braced his hands on the ground so that he would not fall. PO Clarke then pulled § 87(2)(b) up and pushed § 87(2)(b) against the rear passenger door of § 87(2)(b)'s vehicle. PO Clarke told § 87(2)(b) "I told you to get out of the car." § 87(2)(b) who landed chest-first against the car, did not suffer any injuries since he caught himself by bracing his hands against the car but he "got pissed off." § 87(2)(b) told PO Clarke, "That's fucked up. Your own kind. You a black cop. You become an officer to embetter your neighborhood, embetter your community, embetter your race to keep everything together but you're the one making it worse for us. The other cop, he's not even our race and he was doing it by the book. You took it to another level. It didn't even have to go there. You know I don't have to come out of the car. There was no reason to come out of the car. Why you doing that for?" While this was happening, PO Gugliucci asked § 87(2)(b) to get out of the car, which § 87(2)(b) voluntarily did. § 87(2)(b) sat down on the trunk of his vehicle. § 87(2)(b) did not know if § 87(2)(b) said anything since he was still mad about PO Clarke pulling him out of the car. Neither § 87(2)(b) nor § 87(2)(b) were frisked or searched. PO Gugliucci and PO Clarke proceeded to search the front of § 87(2)(b)'s vehicle while § 87(2)(b) sat on the trunk of his vehicle and § 87(2)(b) was standing by the rear passenger seat of § 87(2)(b)'s vehicle.

Two additional police vehicles responded to the location with two officers in each vehicle but they did not do anything. § 87(2)(b) stated that the back-up officers actually kept him calm since he was still "pissed off." One of the responding officers, a black male officer identified by the investigation as PO Mike Civil, was talking to § 87(2)(b) who was telling PO Civil, "This is what I'm talking about. This is what is wrong with today's police system. Y'all abusing the young black kids for no apparent reason. There was no reason for us to be stopped. We had our seatbelts on, we did not have any tints on the windows, and we did not have any loud music." PO Civil told § 87(2)(b) that it was a "inconvenient." The other responding officers got back into their vehicles but remained parked at the location when PO Civil told them that nothing was happening. As § 87(2)(b) was explaining to PO Civil that PO Clarke pulled him out of the car, PO Clarke said to him, "Well, when I told you to get out you should have got out."

PO Gugliucci searched the front driver side while PO Clarke searched the front passenger side. PO Clarke searched the glove compartment. § 87(2)(b) heard the crack of the plastic breaking when the elbow rest/ center console was broken by PO Gugliucci or PO Clarke but he did not see who did it. § 87(2)(b) stated that he believed it was PO Clarke who broke it. Neither officer ever searched the rear seats of § 87(2)(b)'s vehicle or the trunk of the vehicle.

Nothing was found as a result of the vehicle search. PO Gugliucci and PO Clarke apologized to § 87(2)(b) and § 87(2)(b) told them that they were free to leave, and did not issue either of them a summons. All the officers left together. § 87(2)(b) called 311 within seconds of the vehicle stop.

§ 87(2)(b) was offered mediation, § 87(2)(b)

Results of Investigation

Civilians

§ 87(2)(b)

§ 87(2)(b) was interviewed on the phone on January 24, 2008 (encl. 8).

§ 87(2)(b) stated that on November 28, 2007, at approximately 2:45pm, two uniformed officers identified by the investigation as PO Leonard Clarke and PO Thomas Gugliucci stopped his vehicle, in which § 87(2)(b) was an passenger. The first officer, a white male officer identified as PO Gugliucci, came on the driver's side and the second officer, a black heavysset officer, identified as PO Clarke came on the passenger side. PO Gugliucci and PO Clarke asked them to get out of the car. § 87(2)(b) and § 87(2)(b) asked the officers why they were stopped. The officers repeated their instructions and § 87(2)(b) and § 87(2)(b) asked why they were being stopped again. PO Clarke stated, "We have a tough here" and opened the front passenger door. PO Clarke leaned into the car and unbuckled § 87(2)(b)'s seatbelt. PO Clarke then grabbed § 87(2)(b)'s chest area and pulled him out of the car. § 87(2)(b) did not resist at any point. PO Clarke then took § 87(2)(b) to the back of the car. PO Gugliucci again told § 87(2)(b) to exit the car, which § 87(2)(b) did voluntarily. Both officers then searched the vehicle while § 87(2)(b) and § 87(2)(b) stood at the rear of the car. Both PO Gugliucci and PO Clarke searched the inside of the vehicle but not the trunk.

Two additional marked patrol cars came to the scene as back-up and they blocked § 87(2)(b)'s car in. One of the officers who arrived, a slim black male officer identified by § 87(2)(b) as "PO Civil," stood with § 87(2)(b) and § 87(2)(b) while the car was being searched. This officer was identified by the investigation as PO Mike Civil. PO Civil apologized to § 87(2)(b) and § 87(2)(b) for PO Clarke's actions. They told PO Civil that PO Clarke should be apologizing, not him. § 87(2)(b) was unsure if PO Civil witnessed PO Clarke pulling him out of the vehicle but stated that he was a witness to the vehicle search.

§ 87(2)(b) alleged that since the search the car's ashtray does not come out anymore and the armrest is broken; the cover is no longer attached to the center console. § 87(2)(b) stated that the officers did not frisk or search him.

§ 87(2)(b) stated that he was not interested in pursuing the complaint. He opted to withdraw his portion of the complaint and signed and returned a complaint withdrawal form that was mailed to him (encl. 8B).

NYPD Officers

PO Leonard Clarke

PO Leonard Clarke was interviewed at the CCRB on May 15, 2008 (encl. 9).

On November 28, 2007, PO Leonard Clarke worked in uniform from 12:00pm to 8:35pm, assigned to conditions in a marked patrol car with PO Thomas Gugliucci. PO Clarke was the operator and PO Gugliucci was the recorder. PO Clarke did not have his memobook.

At approximately 2:45pm on November 28, 2007, PO Clarke and PO Gugliucci were on patrol on Beverly Road when PO Clarke observed two black males driving in a car in front of his car without seatbelts. Specifically, while driving behind the car, PO Clarke observed the driver's seatbelt's silver buckle in the car's side view mirror, indicating that it was not fastened. PO Clarke attempted to stop the car by turning on his lights and sirens. After about two blocks, the vehicle stopped. PO Clarke approached the driver's side while PO Gugliucci approached the passenger's side. Upon approaching the driver's side of the vehicle, PO Clarke encountered the driver of the vehicle, a black male in his thirties, who was determined by the investigation to be § 87(2)(b). § 87(2)(b) immediately stated to PO Clarke, "Why the fuck are you pulling me over? You're fucking with me because I'm black." At that point PO Clarke noticed that § 87(2)(b)

§ 87(2)(b) was holding his seatbelt across his body with this left hand but that the seatbelt was not buckled. PO Clarke concluded that § 87(2)(b) had pulled the seatbelt across his body as PO Clarke approached the vehicle. PO Clarke asked § 87(2)(b) for his license and registration and told him that he was pulled over because he was not wearing his seatbelt. § 87(2)(b) responded, "I'm not giving you shit." PO Clarke ordered § 87(2)(b) to put the car in park. § 87(2)(b) initially refused but then put the car into park. PO Clarke again asked § 87(2)(b) for his license and registration. § 87(2)(b) responded, "I'm not giving you shit. You're not getting shit until you tell me what the fuck you're pulling me over for." PO Clarke repeated the reason that he had pulled the car over. § 87(2)(b) still refused to provide his paperwork.

§ 87(2)(b) then began reaching in between the two front seats with his right hand, as if he was reaching for something. PO Clarke suspected that § 87(2)(b) might have been reaching for a weapon or trying to hide some sort of contraband. PO Clarke asked § 87(2)(b) to take his hand out from between the seats and § 87(2)(b) refused. § 87(2)(b) then opened his driver's side door as if he was going to get out of the car. PO Clarke told § 87(2)(b) to remain in the car. § 87(2)(b) left the door open and again stated, "What the fuck are you pulling me over for? What the fuck are you pulling me over for?" It appeared to PO Clarke at this point that § 87(2)(b) was going to get out of the car and that he had something in his hand. PO Clarke grabbed § 87(2)(b) to pull him out of the car, but at that point § 87(2)(b) got out of the car on his own. PO Clarke saw that nothing was in § 87(2)(b)'s right hand and he ordered § 87(2)(b) to put his hands on the car. § 87(2)(b) stated, "Why are you grabbing me? Why are you hitting me?" PO Clarke responded, "Sir, I'm not hitting you. Please put your hands on the car for my safety." Then, directing his attention to the passenger in the car, PO Clarke stated, "Passenger, please step out for my safety." The passenger exited and PO Clarke had both occupants move to the rear of the vehicle, because he did not know what § 87(2)(b) had been reaching for. PO Clarke frisked § 87(2)(b) for his safety, due to his refusal to provide ID and reaching inside the car. PO Clarke did not recall if the passenger was frisked, as he was focused on § 87(2)(b).

PO Clarke then "looked" in the front driver and passenger seats, "in the reachable, grabable areas" for approximately thirty seconds. PO Clarke denied that he looked in any compartments inside the car or anywhere besides the grabable areas in the front seats. PO Clarke looked on the floor of the front seats and between the seats where § 87(2)(b) had been reaching but he saw nothing there. PO Gugliucci remained with the occupants of the vehicle and did not search the car. PO Clarke denied ever interacting with the passenger of the vehicle, including physically removing him from the car.

PO Clarke again requested § 87(2)(b)'s identification and requested it from the passenger as well. § 87(2)(b) again refused to provide his paperwork. PO Clarke told § 87(2)(b) that he was going to issue him a summons for driving without a license and another for not wearing a seatbelt. At that point § 87(2)(b) provided his license and registration. By this point a crowd of approximately one hundred people had formed near the car. Backup officers arrived as well but PO Clarke only recalled PO Mike Civil being among them. PO Clarke did not recall a supervisor being on scene. Due to the size of the crowd, PO Clarke and PO Gugliucci decided not to issue any summonses, but PO Clarke completed a UF-250 for the stop of § 87(2)(b).

PO Thomas Gugliucci

PO Thomas Gugliucci was interviewed at the CCRB on September 9, 2008 (encl. 10).

On November 28, 2007, PO Gugliucci worked from 10:00am to 6:35pm. He was assigned to the SNEU team and worked with PO Leonard Clarke and PO Mike Civil. He was in uniform and worked in a marked motor vehicle. PO Gugliucci had no memo book entries pertaining to this incident.

PO Gugliucci stated that he saw two people smoking marijuana and they were arrested. He was advised that § 87(2)(b) was not arrested. PO Gugliucci was shown a picture of the individual and he stated that the incident is very vague and he was under the impression he was at the CCRB for another incident. He doesn't remember this incident with § 87(2)(b).

PO Mike Civil

PO Mike Civil was interviewed at the CCRB on April 3, 2008 (encl. 11).

On November 28, 2007, PO Civil worked from 10:00am to 6:35pm. PO Civil was assigned to the 70th Precinct's SNEU team. PO Civil did not know who he was working with on the date in question but he normally works with PO James Seery, PO Alex Rosario, PO Jason Reynolds, and PO Albert Lloyd as a team. PO Civil was dressed in uniform and was assigned to marked Jeep, number 5145. PO Civil had no memo book entries for November 28, 2007.

PO Civil had no independent recollection of the incident in question. PO Civil had no recollection of responding to Beverly Road between Ocean Parkway and East 22nd Street as backup for a vehicle stop involving two blacks. PO Civil was shown a photo of § 87(2)(b) but PO Civil did not recognize § 87(2)(b). PO Civil stated that he never spoke to § 87(2)(b) or remember being present for a vehicle stop or vehicle search at Beverly Road between Ocean Parkway and East 22nd Street. PO Civil did not observe any officer forcibly removing § 87(2)(b) from a vehicle that was stopped or pulling him out of a vehicle. PO Civil stated that if he had participated in the vehicle stop he would have noted it; but since he was not involved in the incident he did not make a note of it.

PO Albert Lloyd

PO Albert Lloyd was interviewed at the CCRB on May 13, 2008 (encl. 12).

On November 28, 2007, PO Lloyd worked SNEU for the 70th Precinct. PO Lloyd did not know what his tour was for that day and did not know who he was working with. PO Lloyd stated that Sgt. Ruben Duque, PO Jason Reynolds, PO Gordon, PO Mike Civil, PO James Seery, PO Alex Rosario, and PO Leonard Clarke. PO Lloyd explained that PO Clarke works with SNEU periodically. PO Lloyd normally works in an unmarked auto. The two SNEU autos are a black Nissan Altima and a red Toyota Camry. PO Lloyd did not bring his memo book.

PO Lloyd had no independent recollection of the incident in question and did not know what incident in question was about. PO Lloyd was shown a Polaroid of § 87(2)(b) but he did not recognize him. PO Lloyd stated that he never stopped the vehicle of which § 87(2)(b) was an occupant. PO Lloyd stated that he never pulled § 87(2)(b) out of the vehicle by his shirt front, never pushed § 87(2)(b) into the car, and never searched the vehicle that § 87(2)(b) was in.

NYPD Documents

The 70th Precinct tour 2 roll call confirms that PO Clarke, PO Gugliucci, PO Civil, and PO Lloyd were working at the time of the incident, assigned to SNEU (encl. 13).

There were no stop, question and frisk reports completed for § 87(2)(b) or § 87(2)(b) (encl. 14)

Victim's Criminal Conviction History

§ 87(2)(b)) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Subject Officer(s)'(s) CCRB History

Neither PO Leonard Clarke nor PO Thomas Gugliucci have any substantiated CCRB allegations (encl. 2-3).

Conclusions and Recommendations

Subject Officer Identification

Both § 87(2)(b) and § 87(2)(b) described their vehicle being stopped by a white male officer who approached the driver's side and a black male officer who approached the passenger side. They both alleged that the black male officer physically removed § 87(2)(b) the passenger, from the vehicle. While it is clear from their physical appearances that PO Clarke is the black officer described by the civilians and PO Gugliucci is the white officer, PO Clarke testified to approaching the driver's side and removing the driver from the vehicle, and stated that PO Gugliucci approached the passenger side. Both civilians stated that § 87(2)(b) was driving the vehicle, and that he was not physically removed from the vehicle. Though PO Gugliucci had no recollection of the incident, PO Clarke stated that the passenger PO Gugliucci was dealing with willingly exited the car with no physical contact.

§ 87(2)(g)

Though § 87(2)(b) identified PO Mike Civil, a black male, as arriving on scene after the incident began, and § 87(2)(b) described a second black male officer arriving on scene, neither civilian made any allegations against this officer.

Undisputed Facts

It is undisputed that PO Leonard Clarke and PO Thomas Gugliucci stopped the vehicle driven by § 87(2)(b) and § 87(2)(b) at approximately 2:45pm on November 28, 2007. It is undisputed that some verbal interaction took place the police officers and civilians, and that both civilians were removed from the vehicle. It is not in dispute that PO Clarke searched the front seat area of the vehicle.

Disputed Facts

§ 87(2)(g)

Assessment of Evidence

At approximately 2:45pm on November 28, 2007, PO Leonard Clarke stopped a vehicle driven by § 87(2)(b) on suspicion that the driver and passenger were not wearing their seatbelts. § 87(2)(g)

PO Clarke physically removed one of the men from the vehicle, as PO Gugliucci had the other occupant exit the vehicle. After the men exited the vehicle, PO Clarke, and possibly PO Gugliucci, searched at least part of interior of the vehicle. § 87(2)(g)

Pleading of Allegations

§ 87(2)(g)

§ 87(2)(g)

Allegations

A) Abuse of Authority: PO Leonard Clarke stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.

PO Clarke testified to observing the driver of § 87(2)(b)'s vehicle driving without his seatbelt on. § 87(2)(b) claimed that both civilians were wearing their seatbelts. § 87(2)(g)

B) Force: PO Leonard Clarke used physical force against § 87(2)(b)

Both civilians alleged that PO Clarke physically removed § 87(2)(b) the passenger, from the vehicle and used excessive force in pushing him against the vehicle. PO Clarke claimed to have interacted with the driver of the vehicle, § 87(2)(b) and denied using excessive force to remove § 87(2)(b) from the vehicle. § 87(2)(g)

C) Abuse of Authority: PO Leonard Clarke searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.

D) Abuse of Authority: PO Thomas Gugliucci searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.

Though PO Clarke admitted to searching the grabable front seat area of § 87(2)(b)'s vehicle, he articulated that it was due to the fact that the driver, § 87(2)(b) repeatedly refused to provide his paperwork, was argumentative, and suspiciously reached between the seats, even after being warned not to. He also denied that PO Gugliucci searched the vehicle, as alleged.

According to Barry Kamins' *New York Search and Seizure*, in order to lawfully conduct this type of search, there must be "an actual and specific danger to the officer's safety" (encl. 1A-D). Courts have held that when a motorist shows a "blatant disregard of the officer's direction" and displays "furtive conduct" indicative of the attempt conceal a weapon, this constitutes an actual and specific danger, and a search of the limited grabable area can be lawful. § 87(2)(g)

E) Abuse of Authority: An officer damaged § 87(2)(b)'s property.

Both civilians alleged that § 87(2)(b)'s vehicle was damaged during the search of his car. However, § 87(2)(b) eventually opted to withdraw his portion of the complaint. § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: